

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 26, 2014

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 25, 2014. Members present were Chairman Barry Stumbo; Thomas Glover; Kathryn Moore; James Griggs; and Larry Forester. Absent were: Janice Meyer and Joan Whitman. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were: Bill Saltee, Jimmy Emmons, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the June 27, 2014 and July 25, 2014 meetings would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester, and carried unanimously (Meyer and Whitman absent) to approve the minutes of the June 27, 2014 meeting.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester, and carried unanimously (Meyer and Whitman absent) to approve the minutes of the July 25, 2014 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Vice-Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
- a. **C-2014-35: KEENELAND ASSOCIATION** - appeals for a conditional use permit to expand operations, including the building of a new structure and accessory parking, in the Agricultural Rural (A-R) zone, at 3801-4081 Versailles Road (Council District 12),

Staff Comment – Mr. Emmons announced that this case was originally postponed and scheduled to be on today's agenda, but has since been withdrawn by the applicant.

- b. **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - a revocation hearing of a conditional use permit granted by the Board for a bar/nightclub with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3).

Staff Comment – Mr. Saltee announced that one written request for a postponement was received from Mr. Steven Wides on behalf of Mr. Gerald Mack and the Art Bar, which involves this application. He said that Mr. Wides could not be present at this hearing.

Representation – Mr. Andrew Stevens, law partner with Mr. Wides, said that Mr. Wides was not given notice of this hearing until recently, and had two conflicts where he was unable to attend this hearing.

Board Comments – Chairman Stumbo said that it was up to the Board as to whether or not to postpone this item. He then asked the Board about their thoughts regarding the request. Mr. Griggs stated that this has been going on for two months, and that the opposition has had plenty of time to get prepared. Mr. Stevens said that the license holder is listed as Sims Entertainment, LLC; Mr. Wides' client is the lessee, Mr. Gerald Mack. He further stated that Mr. Wides did not get notice of this hearing until yesterday. Mr. Griggs responded that the room was packed with people who had modified their schedule to be at this hearing, and that Mr. Mack could have made arrangements to be represented if he had wanted to.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Meyer and Whitman absent) to deny the request for a postponement.

2. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c)

No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- B. **Transcript or Witnesses** - The Vice-Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none.

- D. **Conditional Use Appeals**
(Sounded Items)

1. **C-2014-64: PROVIDENCE COMMUNITY CHURCH, LLC** - appeals for a conditional use permit to establish a church in a Highway Service Business (B-3) zone, at 2628 Wilhite Court, Suites 115-215 (Council District 4).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adjoining or nearby land uses are mostly of a commercial nature and are not likely to be disturbed by typical church activities. The church's highest parking needs are during the off-hours of the nearby professional offices and should not overlap; therefore, adequate off-street parking is available for the proposed use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
3. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.

Representation – Mr. Gary Thompson, attorney, and Mr. Paul Valentine, pastor, were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were no citizens to present to comment on this request.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover, and carried unanimously (Meyer and Whitman absent) to **approve C-2014-64: PROVIDENCE COMMUNITY CHURCH, LLC** - an appeal for a conditional use permit to establish a church in a Highway Service Business (B-3) zone, at 2628 Wilhite Court, Suites 115-215, for the reasons recommended by the staff and subject to the three conditions recommended by the staff.

2. **C-2014-65: JEANIE L. O'DANIEL** - appeals for a conditional use permit to erect a tent over an outdoor patio, as part of the winery, in the Agricultural Rural (A-R) zone, at 6825 Old Richmond Road (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the appellant's conditional use request should not adversely affect the subject or surrounding properties. The proposed temporary structure will be erected over an existing outdoor patio, is relatively small, and will not be visible from the scenic byway of Old Richmond Road.
- b. No utilities or other special requirements are needed for this temporary structure; and; overall, the site can easily accommodate the relatively small tent that is proposed.

This recommendation of approval is made subject to the following condition:

1. That the temporary structure be installed over the patio area according to the submitted application and site plan, for a maximum of 180 days in any calendar year.

Representation – Mr. Preston Worley, attorney (McBrayer Law Firm), and Ms. Jeanie O'Daniel, appellant were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were no citizens to present to comment on this request.

Action – A motion was made by Mr. Glover, seconded by Mr. Forester, and carried unanimously (Meyer and Whitman absent) to **approve C-2014-65: JEANIE L. O'DANIEL** - an appeal for a conditional use permit to erect a tent over an outdoor patio, as part of the winery, in the Agricultural Rural (A-R) zone, at 6825 Old Richmond Road, for the reasons recommended by staff and subject to the one condition listed.

E. **Conditional Use Appeals**
(Discussion Items)

1. **C-2014-63: DAVORKA KLARIC** - appeals for a conditional use permit for a home occupation (clothing alteration) in a Single Family Residential (R-1D) zone, at 833 Laurel Hill Road (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This proposed home occupation for clothing alteration and tailoring will easily meet the limitations and requirements set forth in Article 1-11, which are designed to limit the impact of such a use.
- b. Adequate parking is available for this use in the driveway of the residence, and on-street parking is available, should the need arise. No disturbances to surrounding property owners are anticipated with this conditional use.
- c. All necessary public facilities and services are available and adequate for the proposed home occupation.

This recommendation of approval is made subject to the following conditions:

1. This conditional use shall be operated in accordance with the submitted application and site plan.
2. All necessary permits, including issuance of a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to continuation of the home occupation use.
3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
4. This conditional use shall become null and void should the appellant no longer reside at this location.

Staff Comment – At this time, Mr. Emmons announced that the staff had received one letter of opposition and two letters of support, which he then distributed.

Representation – Davorka Klaric, appellant; was present; and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

Opposition – Mr. Jeff Brown, who lives at 832 Laurel Hill Rd. (directly across the street from Ms. Klaric) and owns a rental property directly beside Ms. Klaric, said he felt that Ms. Klaric and two or three of her neighbors have "ganged up" on him. He said two years ago, he rented his rental property to a young, quiet couple who have two children. He then said that not long after the couple moved in, Ms. Klaric met him in the middle of the street and they exchanged a few words.

Chairman Stumbo told Mr. Brown that this sounded like a personal issue, and that he needed to state what his opposition was to her appeal. Mr. Brown continued on regarding the confrontation between the two of them. Mr. Brown said, that ever since that day, Ms. Klaric has been a "thorn in his flesh" – calling the City;

calling the Zoning office; doing everything she and her friends could do to aggravate him. He opined that her goal was to get him to move. Mr. Brown then said in the spring, Ms. Klaric “ratcheted it up” a little bit; she called Zoning (referring to Mr. Marx), and said that Mr. Marx came to his place and said that he was investigating the possibility that Mr. Brown was running a daycare. He said that Mr. Marx had noted that he had lots of toys in the yard, and several children of a different race coming in and out of his home. Mr. Brown then presented a photo of children to the Board, and said that some of “them” have friends – some are Hispanic and some are African American. He then said that he did not know it was against the law to have children of another race at his house. Mr. Brown stated that Ms. Klaric was a bigot, and he did not support the application because of her views.

Discussion – Chairman Stumbo asked if there were any questions from staff or the Board, then asked if Mr. Marx had anything to add in regard to the site visit. Mr. Marx said that he did not have anything to add, but that there is an open enforcement case with regard to Mr. Brown’s property - not the daycare, but a landscaping business; noting that he could not discuss that at this time.

Chairman Stumbo then stated that the Board was not going to get into those types of issues because that is not the purpose of this hearing.

Action – A motion was made by Ms. Moore, seconded by Mr. Forester, and carried unanimously (Meyer and Whitman absent) to **approve C-2014-63: DAVORKA KLARIC** – an appeal for a conditional use permit for a home occupation (clothing alteration) in a Single Family Residential (R-1D) zone, at 833 Laurel Hill Road, for the reasons recommended by the staff and subject to the four conditions recommended by the staff.

2. **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - a revocation hearing of a conditional use permit granted by the Board for a bar/nightclub with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3).

In October of 2012, the Board approved a conditional use permit to operate a night club with live entertainment and dancing. One of the conditions for approval was a 6-month review of the use (after issuance of a Certificate of Occupancy), in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions. The conditions to be reviewed are as follows:

- a. That no more than 275 patrons be allowed on the subject property at a time, as permitted by the fire code.
- b. That the hours of operation be from 8:30 pm until 2:30 am, Wednesday through Saturday.
- c. That any private parties (no more than 275 persons) be held from 8:30 pm until 2:30 am, Monday and Tuesday.
- d. That no business activity, private or public, be conducted on Sunday.
- e. That some type of food items and a menu be provided on the premises.
- f. That off-site parking is provided for the employees by lease agreement approved by the UCG Law Department; and that the Planning Staff is apprised of the location.
- g. That the nightclub with live entertainment and dancing be established in accordance with the submitted application and site plan.
- h. A Zoning Compliance Permit and a new Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy as a nightclub with live entertainment and dancing.
- i. Outdoor live entertainment and/or outdoor speakers shall be prohibited, and the doors to the nightclub shall remain closed during the times when live entertainment is offered.
- j. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
- k. The use shall be reviewed by the Board 6 months after approval.

In January of 2014, the Board approved the 6-month review to continue operation with expanded hours for a night club with live entertainment and dancing. The Board determined that an additional 6-month review was needed, in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions. Two additional conditions were imposed; as follows:

- l. That no under 21 is allowed on the premises.
- m. That the Board review this case again in 6 months (January 2015).

The Board also set the hours of operation back to 1:00 a.m.; Wednesday through Saturday; and changed conditions B and C to reflect revised hours of operation from 8:30 p.m. until 1:00 a.m.

In January of 2014, the Board approved the 6-month review to continue operation with the revised hours for a night club with live entertainment and dancing. The Board determined that an additional 6-month review was needed, in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions.

Board Comment – Chairman Stumbo said that some parameters were going to be set for the subject application. He said that the July 2014 minutes are going to be a part of the historical record; then asked if the opposition have a spokesperson to represent them. Chairman Stumbo said that the Board has heard extensively from the applicant and the opposition, and said that there will be a 15-minute time limit on the staff's report; a 15-minute time limit for the applicant; and a 15-minute time limit; collectively, for the opposition. He then said that the Board does not want to hear repetitive evidence from the past hearing.

At this time, Ms. Jones said that it appeared that Mr. Mack and his attorney were not present, and that the Board may want to see if they are present before getting started. Mr. Sallee returned to the chambers after searching for Mr. Mack and his attorney, and advised that Mr. Mack stated to him that he did not plan to attend this hearing. Chairman Stumbo asked Ms. Jones if it would matter if Mr. Mack was present or not. Ms. Jones said it did not matter because someone from Sims Entertainment was present.

Staff Report – Mr. Emmons started his presentation by stating that he had distributed handouts to the Board prior to today's hearing in regard to written communication that the staff had received; the majority of them were letters of opposition, and at the top of the packet was a petition that was handed to the staff right before today's hearing. Mr. Emmons said; for the record, that at the beginning of the packet there were notice letters that were sent to Mr. Gerald Mack and Mr. Albert Grash, attorney for Sims Entertainment; the neighborhood association that was originally notified regarding the conditional use applications and; was also sent the packet all of those letters were notification of today's revocation hearing.

Mr. Emmons then presented an updated timeline that staff had presented in the previous hearing. He said that this timeline had an abbreviated history of the Board of Adjustment's actions on this property. Mr. Emmons said that the staff would like to point out that there were two case numbers for the Board to be made aware of, in case they decide to revoke this conditional use. (C-1991-96: J.D.'s of Lexington; and C-2012-70: Sims Entertainment Group).

At this time, Mr. Emmons presented the green sheet in the packet, which was the current Certificate of Land Use Restriction; this is a summary of the 13 conditions that the Board had placed on this use.

He then presented a white sheet of paper in which was the previous Certificate of Land Use Restriction that had the 13 conditions that were imposed prior to the July 25th hearing.

Then Mr. Emmons reviewed the specific conditions of this case. On the green sheet, Mr. Emmons pointed out condition numbers 2 and 3, which were changed at the July hearing to 1:00 a.m. (the hours of operation); both conditions 2 and 3 have the hours of operation 8:30 p.m. - 1:00 a.m.; Wednesday through Saturday. Since the July 25th hearing, the bar has been open past 1:00 a.m. Mr. Emmons said that staff had previously mailed out to the Board, a list of police reports that indicates every week that a report has been received from the police, that the bar has been open past 1:00 a.m. since the Board put the new condition on it. He said the only new information since the mailing was a recent police report, which also stated that Art Bar was open until 2:30 a.m. Mr. Emmons stated that the applicant was also mailed the same information that had been provided to the Board.

Mr. Emmons said that the staff was also presenting a conditional use, hours of operation, memo that was written by the Division of Planning after the first instance the Art Bar was open after the 1:00 a.m. limit by the Board's action. That memo stated that the Board's action requires that the club cease its hours of operation at 1:00 a.m.; that was noted on August 7th, shortly after the July 25th hearing. Mr. Emmons said that the all of the police reports indicate that the applicant's actions are contradictory to the limitations that were put in conditions 2 and 3.

Mr. Emmons said that the timeline was on the top of the packet that contained all of the minutes, as assembled, from September 25, 1991 to July 25, 2014. He then said that the staff is resubmitting the petition from the July 25th meeting for today's revocation hearing; and staff is resubmitting photos of the trash, etc., that were also presented at the July 25th meeting.

Mr. Emmons concluded by saying that the staff does believe that, with the evidence, testimony, and other items that were submitted in the previous hearings, that information also contradicts the limitations of condition #10, which states: *"the use shall be sound-proofed to the maximum extent feasible... and that noise and other emissions not create a nuisance to the surrounding neighborhood."* It was his belief that there was ample evidence in both police reports and the previous hearings that with conditions 2, 3, and 10 they were not in compliance. Mr. Emmons advised that, if this application is disapproved, the Board should include both case numbers (from 1991 and 2012).

Representation – Ms. Crista Hollingsworth, attorney (302 W. High St), was present on behalf of Mr. Al Grasch for Sims Entertainment, said that they own the property. Their lessee is Mr. Gerald Mack, who is charged with the day-to-day operation and management. With regard to what has gone on there, her client is not in control of that and she could not speak to that. She then said in their own interest and in the interest of their lessee, they oppose revoking the conditional use permit.

Opposition – Mr. David Jaquith, who lives at 250 S. Hanover, officer of the Ashland Park Neighborhood Association and a member of the Board of Directors, said that their neighborhood association geographically consists of South Ashland, South Hanover, Desha Road, and portions of Central Avenue and Kastle Road. It contains approximately 330 households. Their neighborhood immediately abuts the Chevy Chase business district; therefore, they are directly impacted by activities in that area. He said that many of the members have experienced detrimental effects and disruptions in their lives as a direct result of multiple and continuing violations of the conditional use permit for the property at 815 Euclid Avenue. Mr. Jaquith said they strongly support the revocation of the permit. Mr. Jaquith then asked those who were opposed to continued operation of the bar to several audience members stood to voice their opposition.

Mr. Bill Farmer, 5th District Council Member, said that he concurred with what had been said. He said that at the time the conditions were put in place, this was a time spent between neighborhood associations and neighbors, property owners, and business owners. Mr. Farmer asked that the Board "wipe the slate clean" and start again; the conditional use does not fit the opportunity that Chevy Chase presents today, and the neighborhood is interested in a different outcome for that property, as well as its use. He said that it was their understanding that Mr. Mack had indicated that he planned to move the business, and asked that the stage be set for the next person to come in and be a positive part of the community and the neighborhood.

Ms. Sally Warfield, Legislative Aide for 3rd District Council Member Diane Lawless, said that they support the revocation of this permit. She then said that they would like to note that what is not at issue at this hearing is a personality conflict or anything personal. She said that the, Sims Entertainment has done business under a number of different names, Art Bar being the latest one (also Blue Moon and Forte'). They have had these problems for several years, going back as far as 2012, and these things are not going away. Ms. Warfield said that; having looked at the conditional use, there are 11 conditions, plus 2 more than were just recently added. She said that if this many conditions need to be placed on a property in order to function correctly, maybe this isn't the best area for that business to be located. She said that; as seen over and over, they are not able to function within the boundaries that are set out in the conditional use permit; they are constantly disregarding the 1:00 a.m. closing time; they are not keeping an orderly premises (according to the ABC reports); there are constant incidents that have been reported, from noise to vomit to urine, which is also another reason, other than this has been shown to not work.

Ms. Patty Abell, who lives at 111 Louisiana Avenue, representing the Louisiana Neighborhood Association, said that they have taken a formal vote to go on record that they oppose this and would like to have the conditional use permit revoked. They are tired of the business being in their neighborhood. Ms. Abell said the bar staying open until 2:30 a.m. is not happenstance, as evidenced by social media and their fliers that go out every week. She opined that they were deliberately staying open against the Board's directive. She concluded by saying that they would like to have their conditional use permit revoked.

Sgt. Jason Parks, on behalf of Commander Melissa Sedlacek, LFUCG Police Department, said that the Division of Police is neither in opposition nor in support of revocation; however, he wanted to provide a little detail of what the patrol officers have documented and witnessed since the July 25th BOA meeting. Sgt. Parks said that there was documentation that the bar has been open past the 1:00 a.m. time frame twelve times. Of those twelve times, there have been 5 incidents of arrests (directly or indirectly due to the activity at the club after 1:00 am; there have been 2 ABC administrative charges against Sims Entertainment (ABC license holder); and of those 2 cases, there have been a total of 5 charges made. Chairman Stumbo asked if Sgt. Parks could share what the charges were. Sgt. Parks said that the charges were still pending to revoke ABC license of Sims Entertainment, but they were: August 3, 2011- Disorderly Premises (loud and disorderly behavior); selling alcohol to a minor; violation of KRS 244.80- allowed a minor to enter or to remain on the property. The second was on August 8, 2014, again selling alcohol to a minor; and allowing

a minor to enter or to remain on the property, in violation of the statute.

Board Questions – Mr. Glover asked if the 5 arrests were relevant to any issues that have been mentioned at this hearing. Sgt. Parks responded that; to clarify, his report were notes from Commander Sedlacek; those were just incidents from patrol officers to document the fact/possibility that they were staying open past 1:00 a.m.; they responded to services in or around the club. He said that he did not have the details as to what the incidents were, but that information could be obtained. Mr. Glover asked if it was related to the club after the 1:00 a.m. closing time. Sgt. Parks said it was prior to or after the officers were there after 1:00 a.m. to document that they remained opened past 1:00 a.m.

Opposition (cont'd) – Mr. Peter Ecabert, who lives at 836 Euclid Avenue, #406, and President of the Chevy Chase Plaza Condo Association was present. He distributed to the Board some additional petitions that were signed by residents of the Chevy Chase area to support the revocation of the conditional use permit as a nightclub for the subject property. He said they also they wanted to point out that Sims Entertainment is the party with the conditional use – the party of record. Mr. Ecabert said as to date, in checking with the Secretary of State's Office, Sims Entertainment is an LLC that is owned and managed by a Mr. Lawrence Kopczyk, who is a dentist in Lexington. The other member is Mr. Robert Thompson, who is a doctor in Louisville. He said that it is their liquor license; and if they were to shut down their liquor license, this could go away quickly. Mr. Ecabert said, as stated earlier in the hearing, this type of operation is not compatible with the neighborhood; and there are many more things that could be there that would be much more compatible. He said that this has been a nuisance from the beginning for the last couple of years and has been particularly bad within the last few months since Mr. Mack had taken over the club.

Mr. Ecabert said, in addition, he would like to note that Mr. King sent a letter to Mr. Mack, stating that he was not to stay open past 1:00 a.m. unless a court of competent jurisdiction has an injunction stating that Mr. Mack could remain open until 2:30 a.m.; and this has not been abided with, according to the testimony at today's hearing.

Citizen Comment – Ms. Kelli Mullins with Caller Properties Equity Management Group (owner of several of the surrounding businesses), said that she wanted to correct the statement that Sims Entertainment Group is not the owner of the subject property. They own the liquor license. The previous tenant and actual owner is Mr. John Cole. She said that she spoke with Mr. Cole's attorney the day prior to this hearing to ensure that they were aware of this hearing, and they were not present.

Opposition (cont'd) – Ms. Janie Fergus, who lives at 308 S. Hanover Avenue, said that she has lived in the area for 19 years. She has witnessed several years of really significant problems, to the point that she had talked to Doctor Kopczyk several years ago. He had assured her that the issues would be addressed, but clearly they have not been. She said that she wasn't clear as to what Mr. Emmons had said was in the packets, and inquired about a letter that she had prepared. Chairman Stumbo asked Ms. Fergus if the photos she had were the same ones from the previous hearing; and, if so, there was no need to resubmit them. Mr. Emmons clarified that Ms. Fergus' letter was distributed to the Board as part of the packet.

Ms. Fergus spoke of the photos that she submitted at the July hearing, and stated that she learned of what the "Fancy Ladies" meant on the filers. She said that, according to the Urban Dictionary, it meant prostitutes, and she did not think that it was fitting for their neighborhood to be having those types of parties.

Board Comments – Chairman Stumbo stated that, after hearing testimony, and the fact that the applicant left the hearing, he wanted to ask Counsel, if a motion was made to revoke this application, what the best way was to do this. Ms. Jones responded that the Board would need to make a motion with some findings, and vote on it. Chairman Stumbo also asked, if the permit was revoked, if it would be for Sims Entertainment and not just the person who is leasing the space. Ms. Jones replied that there would be no conditional use permit on the subject property; therefore, they could not lease to anyone to do things that are in that permit.

Mr. Griggs asked Ms. Jones if there were any statutory or ordinance findings required for the Board in order to revoke a conditional use. Ms. Jones responded that the Board would need to find that there is noncompliance with the conditions.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Meyer and Whitman absent) to **revoke C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** of all conditional use permits under cases C-2012-70 and C-91-96: Sims Entertainment Group, LLC in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue based on the following findings:

- 1) The applicant is in direct violation of conditions number 2 and 3 of the amended conditional use permit by remaining open beyond the hours set forth in the permit, intentionally, and as evidenced by police reports and direct observations.
- 2) That the applicant is in violation of the conditional use permit condition number 10, by allowing noise that creates a nuisance to the neighborhood causing an adverse impact on the neighborhood.

Chairman Stumbo stated that the Board's decision is final, but asked Ms. Jones if the only other recourse would be for the applicant to file a case in the Circuit Court within 30 days. Ms. Jones said that that was the case, it must be within 30 days from the date of today's hearing, and the Board's order is effective after today's hearing.

Chairman Stumbo then asked Ms. Jones if the applicant did not abide by the order today, if the Board could then seek an injunction to remove them. Ms. Jones replied affirmatively.

F. **Administrative Review**

There were none

- IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time. Chairman Stumbo spoke of the written disclosure of conflict of interest that was passed out to the Board members prior to today's hearing, and said that this is something that a Board member needs to do when recusing him or herself from a case.

Ms. Jones said that she had placed some memos at the Board's seats prior to the meeting in regard to recent decisions in cases or filings that apply to Board of Adjustment cases. She stated that she would answer any questions that the Board may have about them, or they can be discussed at the next month's Board meeting.

There were a few back and forth questions with Mr. Glover and Ms. Jones in reference to Ms. Jones' memo.

- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time. Mr. Sallee reminded the Board of a training opportunity in a couple of weeks, on October 10th.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be October 31, 2014.
- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 2:28 p.m.

Barry Stumbo, Chair

James Griggs, Secretary